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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,371	10/03/2003	Eckhard Schwoebel		9739

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT PAPER NUMBER

3727

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/677,371

Applicant(s)

SCHWOEBEL, ECKHARD

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on May 18, 2005. These drawings are approved by the examiner.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the peripheral edge portion "merging" with said inner cylindrical circumference and "said end member includes a peripheral wall located between said openable portion and said collar".

Claim Rejections - 35 USC § 112

3. Claims 12-35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the disclosure as originally filed for the following:
 - the larger peripheral edge portion of the funnel "merging" with the inner cylindrical circumference of the wall; and
 - two additional containers as set forth in claims 22-24 and 26-28 (whereas claim 14 previously sets forth an additional container).
4. Claims 22-24 and 26-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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An additional container is set forth in claim 14. Claims 22-24 and 26-28 also set forth an additional container. Are these intended to be the same additional container or two different additional containers?

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by van der Meulen (US 4,715,510). Disclosed is a beverage can with an upper can collar (23) surrounding a can opening (26) closed by a closing member, characterized by a drinking cap (31) having a substantially cylindrical wall (see claim 1) attached onto the can collar and having a drinking opening (27), wherein the drinking cap (31) comprises a funnel (30) to be supported on the top wall of the beverage can, the funnel guiding liquid from the can opening to the drinking opening. See figure 7. To the degree "merging" is set forth in the instant claims, the funnel merges as the upper, wider end with the cylindrical wall of the cap via a horizontally extending wall.

Claim Rejections - 35 USC § 103

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over van der Meulen in view of Berro (US 6,450,358).

Van der Meulen teaches the claimed drinking cap except for the bead for securing the cap to the can collar.

Berro teaches it is known to provide a beverage can cap with a bead for securing the cap to the beverage can collar.

The examiner takes Official Notice of the equivalence of snap-fit engagement using a bead and friction-fit engagement for their use in the closure art and the selection of any of these

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known equivalents to secure a cap to a container would be within the level of ordinary skill in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the bead of Berro for the friction-fit engagement of van der Meulen. Doing so is an obvious substitution of equivalent structure known in the art and provides a more secure engaged between the cap and the beverage can collar.

8. Claims 14-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over van der Meulen in view of Bernhardt (US 4,340,138).

Van der Meulen teaches the claimed drinking cap except for the additional container.

Bernhardt teaches it is known to provide a container with a closure having an additional container within the closure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an additional container to the cap of van der Meulen. Doing so provides a container for a food item so as to allow for carrying the beverage and a snack with one hand.

9. Claims 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over van der Meulen in view of Bernhardt.

Van der Meulen teaches the claimed drinking cap except for the additional container.

Bernhardt teaches it is known to provide a container with a closure having an additional container within the closure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an additional container to the cap of van der Meulen. Doing so provides a container for a food item so as to allow for carrying the beverage and a snack with one hand.

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10. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over van der Meulen in view of Bernhardt and Berro.

Van der Meulen teaches the claimed drinking cap except for the additional container and the bead for securing the cap to the can collar.

Bernhardt teaches it is known to provide a container with a closure having an additional container within the closure.

Berro teaches it is known to provide a beverage can cap with a bead for securing the cap to the beverage can collar.

The examiner takes Official Notice of the equivalence of snap-fit engagement using a bead and friction-fit engagement for their use in the closure art and the selection of any of these known equivalents to secure a cap to a container would be within the level of ordinary skill in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the bead of Berro for the friction-fit engagement of van der Meulen and to provide an additional container to the cap. Doing so is an obvious substitution of equivalent structure known in the art and provides a more secure engaged between the cap and the beverage can collar and provides a container for a food item so as to allow for carrying the beverage and a snack with one hand.

Response to Arguments

11. Applicant's arguments filed May 18, 2005 have been fully considered but they are not persuasive.

It is noted applicant mistakenly indicates at page 12, paragraph 3 of the response that only rejections under 35 USC 102 were set forth in the previous Office action. Applicant's

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attention is directed to paragraphs 13-15 of the previous Office action setting forth rejections under 35 USC 103. Thus, no arguments were presented with respect to these rejections.

Regarding applicant's arguments at page 12, paragraph 2, directed toward the "merging" of the funnel with the cylindrical wall of the cup, the examiner asserts that the term "merging" is not clearly defined to indicate the funnel upper edge is directly connected to the cylindrical wall nor precludes the existence of a secondary connecting wall. Additionally, claim 1 sets forth a substantially cylindrical cap wall.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group

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3720 will be promptly forwarded to the examiner. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

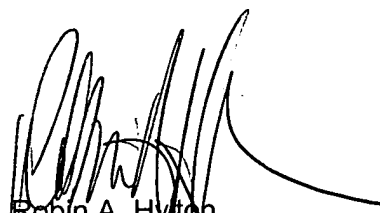
Date _____

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
August 5, 2005



Robin A. Hylton
Primary Examiner
GAU 3727

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REPLACEMENT SHEET

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